

The Business of Economic Consulting

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There is no quicker way to find yourself alone in a room than to tell a stranger that you are an economic consultant. It resides in a mysterious and often unknown corner of the business world. However, the economic consulting business can provide fascinating consulting opportunities for both full-time academics as well as economists looking for a career track outside of academics.

What is economic consulting? While the words could obviously describe a range of consulting services, there are six large, national economic consulting firms that (among other services) offer experts in economics and finance to testify in major litigation matters. There are also many, many smaller or more specialized boutiques that also provide and work with economics and finance experts. Those experts might be full-time academics who are supported by staff from the economic consulting firm, or might themselves be partners at the firm. Some economic consulting firms have a business model which relies primarily on outside academics; some rely primarily on inside staff as the potential experts. My firm, Analysis Group, has a hybrid business model and thus some partners specialize in academic support, while others are testifiers. I personally enjoy coordinating the support of multiple academics in very large litigations for clients such as Microsoft and MasterCard, because I learn so much from the professors and I enjoy managing the strategic aspect of how the pieces come to fit together in a major antitrust or finance case. Some of my partners and many academics really enjoy the other role which entails having the spotlight on you; convincing a fact-finder; being “the expert”. Either role is hugely valuable in responding to client needs.

Economic consulting firms differ in many other ways, as well. Barriers to entry are low and firms are always entering, growing, shrinking, or changing. Most economic consulting firms began around a particular kernel or specific business model. Frequently, the beginning of the firm may have occurred when a small group of professors decided to set up a firm providing more consistent and professional support for their consulting activities. Some firms were originally owned by the group of professors who started them, and some remain

so. Other firms were started by, and often remain owned by, a group of full-time consultants either providing leverage to academics or serving as experts themselves. As well, frequently the economic consulting firms initially specialize in a particular area, which may be driven either by the interests of the founding partners or the consulting needs in the business environment. One major firm essentially began during the Justice Department’s long antitrust litigation against IBM, and several major firms initially provided defense support during the early explosion of plaintiffs’ class actions in the securities area. These firms have since evolved into “full service” economic consulting firms.

The larger economic consulting firms tend to offer and support economics and finance experts in the following areas: antitrust; securities; financial institutions and their practices; intellectual property damages; health care; labor; energy and telecommunications; and general commercial damages. One of the aspects of the business that I particularly enjoy – in contrast with the academic world – is that client problems essentially set our research agenda. I sometimes think of the activity as similar to a tennis ball return machine – fascinating problems that clients care about tremendously are served up and the job is to bring the best, most creative and current thought to how to return them. Some years the machine serves up more antitrust than finance; some years we study payment cards and other years we value complex derivatives with unusual payoffs; and the variety of what is required by the business environment is one part of what keeps the work endlessly interesting.

It is straightforward to see why economists are needed to address issues of competition in an antitrust matter, or to analyze the value of a complex derivative. But economists are also critical in addressing problems in areas such as intellectual property damages, for example. A typical intellectual property problem may involve a patent infringement claim, in which one party sues another, claiming either sales or royalty income was displaced as a result of the impermissible presence of the defendant’s products. In order to analyze what sales were lost, it is necessary to determine the market in which the plaintiff’s and defendant’s products existed; what other alternatives ex-



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isted in the market; the degree of differentiation and likely substitutability between the plaintiff's, defendant's, and other alternative products; and whether the market was expanded as a result of the defendant's activities. In one matter in which market expansion was a key issue, our client sold a drug which treated MS symptoms. The plaintiff manufactured a different drug, also treating symptoms rather than curing the disease. Each drug had side effects such that a potential user might well decide to forego treatment, rather than use the plaintiff's drug if the defendant's had not been available. We looked at sales patterns and developed saturation models, as well as conducting surveys of patients and doctors, in order to assess the actual impact of the defendant's allegedly infringing drug on the plaintiff's sales.

The business has burgeoned over the last ten years, as complex litigation raising topics that interest economists has mushroomed. Recent business growth is also as a result of two engines—increased complex class action litigation in areas such as antitrust, as well as increased focus by federal and state regulators on complex business and financial issues. As a clear example of the former, we have coordinated the economic analysis for Microsoft in over 140 consumer class actions which followed the Department of Justice litigation with Microsoft. These cases raise fascinating questions of the importance of network effects and economies of scale in explaining market position and profits, as well as the complex task of determining what but-for software prices would have been, if indeed conduct by Microsoft is proven to have raised price levels. As examples of the latter – work that has resulted from regulators and their initiatives – we have supported several Independent Distribution Consultants under joint retention by the SEC, state attorney generals, and independent mutual fund trustees. The task of these experts is to quantify the impact of market timing on long-term mutual fund shareholders and distribute appropriate restitution. Many similar situations requiring sophisticated analysis have arisen as a result of these new forces in the private and regulatory litigation arenas.

Whether or not economic consulting is personally satisfying has an enormous amount to do with how the activity is conducted. One of the questions I am almost always asked by economists who are interviewing for full-time positions is whether there are cases we would not take or analyses we would not sponsor. The answer is a resounding yes, but is actually a subset of a more important question, both for academics who look to an economic consulting firm for business opportunities and support, as well as for economists thinking about a full-time position with a particular firm. The most critical factor in terms of whether the work is personally satisfying is whether work quality and work robustness is a paramount, fundamental value of the organization. If you are an academic thinking about working with an economic consulting firm, the most important criteria should be will the work be done correctly; will the consultants be creative and proactive in thinking through all the risks of a position or an analysis; will all of the details be implemented with thought and care; and lastly, will the consultants protect you and run interference for you if an attorney is too aggressive in pressing a position you are not comfortable with. Similarly, if you are considering a full-time position as a consulting economist, you are likely to find the career enormously more fulfilling if you feel the work you do is high quality, high integrity, and unusual.

On a personal note, I found economic consulting myself not because I knew the business would be so compelling, but because I had a law degree and a business degree, two small children, and a strong desire to work less than full-time. I thought that this was project work that I could undertake to keep my hand in, and simply had no idea that the problems would be so interesting and the opportunities so varied. I also had powerful economics genes (father, Herb Scarf; father-in-law; Paul Samuelson) that must have been directing me towards what has been at least for me a truly fascinating career.